



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8EPR-SA

Mr. Jeffrey Deckler
Remedial Programs Manager
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Re: Rico, Colorado

Dear Mr. Deckler:

Enclosed is a copy of a memorandum to the file regarding our determination that Rico, Colorado is excluded from Eligible Response Site (ERS) status under Section 101(41)(C)(i) of the Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA).

The exclusion as an ERS may be reversed by EPA once a "no further federal action" (NFFA) determination is made. EPA reserves the right to make a NFFA determination at such time that: 1) the voluntary cleanup action is completed and EPA is confident that the site will not require action under CERCLA, 2) a determination is made that no further remedial action is planned (NFRAP), and 3) cost recovery is not anticipated. Please note that determinations under section 101(41)(C)(i) to exclude a site from the ERS definition have no effect on EPA's authority to provide grant or loan funding under sections 104(k) (brownfields competitive grants) or 128(a) (state and tribal program grants).

If you have any questions about this matter, please feel free to contact me at 303-312-6817 or Debra Ehlert at 303-312-6108.

Sincerely,

David Ostrander, Program Director
Preparedness, Assessment, and Emergency Response

Cc: City Attorney, Town of Rico
Ramon Escure, Rico Renaissance
Dave McCarthy, ARCO
Stan Foster, Rico Properties





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Ref: 8EPR-B

MEMORANDUM

SUBJECT: Eligible Response Site Determination
Rico, Colorado

FROM: Debra G. Ehlert, Chief
Brownfields and Site Assessment Unit

TO: File

During mid-calendar year 2003, at the request of the Town of Rico, EPA conducted an investigation (Site Reassessment and focused Site Inspection (SI)) to determine the extent and nature of contamination in and around the Town of Rico ("the site") and whether to consider the site for listing on the National Priorities List (NPL). The SI encompassed the area in and around the Town of Rico and identified a number of contamination issues including residential/commercial soil contamination, water quality issues in the treatment ponds north of town and in Silver Creek, wetlands and sediment contamination along the Delores River corridor adjacent to the town, tailings piles, former mill sites, and mine workings. Results of that investigation¹ concluded that the site, in its totality, obtained a preliminary score sufficient for listing on the NPL.

On April 21, 2004, the Colorado Department of Public Health and Environment (CDPHE) notified EPA Region 8 that they were in receipt of a voluntary cleanup program (VCP) application from co-applicants Atlantic Richfield Company (ARCO), the Town of Rico, Rico Renaissance, and Rico Properties. The VCP application submitted to and subsequently approved by CDPHE addresses a limited number of the contamination issues, predominately cleaning up lead contamination in current residential and commercial properties and the Van Winkle mine headframe area.

EPA and CDPHE have been meeting on a regular basis prior to the submittal of the application up through the present, to discuss coordination of actions at the site. During a meeting held in April 2004, CDPHE was consulted regarding EPA's preliminary determination to exclude the site from "Eligible Response Site" status under section 101(41)(C)(i) of the Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA).

¹ *Site Reassessment Report* dated November 14, 2003 (TDD #0305-0014) and *Analytical Results Report for Focused Site Inspection* dated January 16, 2004 and February 9, 2004 (TDD #0308-0013)

Inasmuch as EPA conducted a Site Inspection at this site obtaining a preliminary score sufficient for listing on the NPL, and the state environmental agency was consulted, **EPA is hereby making the determination to exclude the entire site as an Eligible Response Site.** The effect of this determination is that the site is not subject to the NPL listing deferral provisions in CERCLA section 105(h), and the limitations of EPA's enforcement and cost recovery authorities under CERCLA section 128(b) will not apply at the site.

Notwithstanding the Eligible Response Site exclusion determination, in accordance with the Memorandum of Agreement (MOA) with CDPHE, EPA agrees to suspend investigatory and response action activities in lieu of the applicant's compliance with the approved VCP. The MOA states that CDPHE will keep EPA informed of the applicant's progress toward completion of the remedial action. The MOA does not define a formal concurrence role for EPA in the VCP approval process therefore EPA participation cannot be construed by any party as acceptance or approval of the cleanup plan application, implementation, or outcome.



Is my site a “Brownfields Site?”

What does it mean to be an Eligible
Response Site?

Can I get Brownfields Grant funding?

Can EPA enforce against me?

Brownfields Site Definition Paragraph 39(A): Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

Brownfields Site Exclusions: Paragraph 39(B)

- i) **A facility with planned or ongoing removals**
- ii) **A facility listed or proposed for listing on the NPL**
- iii) **A facility subject to UAO, AOC; judicial consent decree, court order under CERCLA**
- iv) **A facility subject to UAO, AOC; judicial consent decree, court order under SWDA, CWA, SDWA, TSCA**
- v) **A facility subject to corrective action under SWDA; correction action permit or order**
- vi) **A land disposal unit under closure notification; other closure requirements specified**
- vii) **A facility subject to federal jurisdiction, custody, or control, except for Tribal Trust Lands**
- viii) **A portion of a facility where there is a release of PCBs and is subject to remediation under TSCA**
- ix) **A portion of a facility which funding for response has been obtained under RCRA-I (LUST)**

Sites underlined may be eligible (Paragraph 39C) for funding under 104K on a site by site basis if determined that assistance will protect human health/environment and either promote economic development or enable creation/preserve parks/greenways/recreational property, or other property used for nonprofit purposes.

Eligibility for 104k funding Paragraph 39(D): Meets definition of Brownfields site; is contaminated by controlled substance or petroleum (low risk & no viable RP); is mine-scarred land.

Eligible Response Sites (ERS):

-Meets definition of Brownfields site
(Paragraphs 39 A & B on previous
page)

- Includes Lust Trust funded sites.

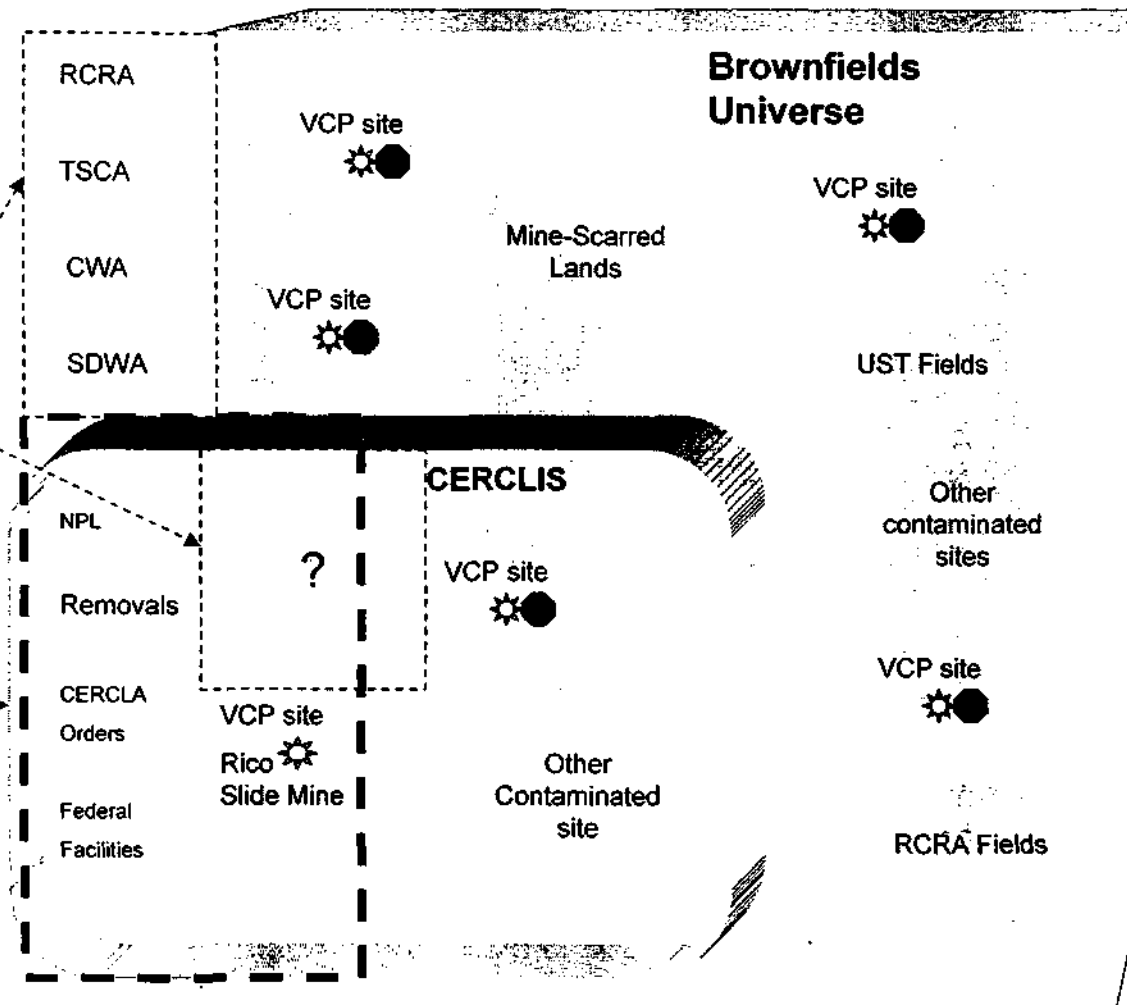
-ADD BACK IN TO ERS Universe ...

2. Sites otherwise "excluded" (see
below & paragraph 39(B)), that are
determined on a site by site basis and
after consultation with the state, that
limitations on enforcement under 128
at sites specified in iv, v, vi, or viii will
protect human health/environment,
promote economic development,
create/preserve greenway, etc.

Sites Excluded ERS determinations:

1. PA/SI completed; and
2. State consulted and
 - preliminary score =>
28.5, OR
 - does not otherwise
qualify (i.e. state
designates site as high
priority; ATSDR
declaration of health
threat advisory.

LUST funded



● EPA Enforcement Ban (106a or 107a) is ONLY applicable to ERS's where

- There is a release or threatened release and
- A person is conducting or has completed a response action regarding that release that is in compliance with the state program governing the response action.

Summary

Eligible Response Site (ERS)

All "sites" that meet the definition of a Brownfields site are considered by Statute to be an "eligible response site." Eligible Response Sites are those sites that EPA will not put on the NPL. Eligible Response sites qualify for the enforcement ban ONLY if the release is being (has been) cleaned up under the authority of a state VCP program.

Eligible Response Site (ERS) Exclusion

Sites where a PA/SI has been conducted, the state has been consulted, a score has been obtained greater than or equal to 28.5 has been determined, OR
the site has been designated "high priority" by the state, OR
ATSDE has declared a health threat advisory.

These sites are not "eligible response sites," so the provisions of CERCLA 105(h) and 128(b) do not apply. This means that EPA does not have to defer final listing of the site on the NPL at the request of the state. It also means that certain limitations on EPA's enforcement and cost recovery authorities do not apply at the site.

Exceptions to the Ban on Enforcement

- An administrative or judicial action (106a or 107a) may be brought during or after completion of the response if:
 - The state requests assistance,
 - The administrator determines contamination has migrated across state line resulting in the need for further response action to protect health or environment, or has migrated onto property subject to federal jurisdiction;
 - The administrator determines that:
 - A release may present an imminent or substantial endangerment, and
 - Additional response actions are necessary to address/prevent/limit/mitigate the release or threatened release.
 - The administrator, after consulting with the state, determines that new information has been discovered such that a threat exists requiring further remediation. Consultation shall not limit the ability of the administrator to take action.